



Montoya, Darlene <dmontoya@nmag.gov>

## Reply to request for policies

1 message

**Lindell Smith** <lsmith@artesianm.gov>  
To: "dmontoya@nmag.gov" <dmontoya@nmag.gov>

Tue, Dec 20, 2016 at 10:04 AM

Ms Montoya

Please see the link in a separately sent email from Dropbox.com for the Artesia PD's response to the request for policies and procedures governing officer involved shooting and use of force incidents. I highlighted some items that might serve as focal points for what the committee is trying to understand.

Also, to answer the additional items in the letter from Chief Kassetas:

Training was received in use of force and response to resistance by all field employees of the Artesia PD between the months of April and October of 2016 using the current NMDPS lesson plan and our policies.

The last time the policies being sent were revised was:

Mission Statement	02/15/16
Code of Ethics	02/15/16
Use of force intervention addition	11/07/16
Internal Affairs	10/03/16
Criminal investigations	02/15/16
Incident scene security	02/15/16
Use of Force	02/15/16
Weapons and tactics	02/15/16
Employee fatal incidents	02/15/16

Explanation of highlighted items:

- P 2                  Mission statement to protect, serve and hold accountable  
5-6                  Code of ethics minimum standards

- 7-8            New additions requiring intervention at the point of excessive force
- 10-11          IA policy fair and accurate investigations
- 13            Chief can have issues investigated by dept members or ask another agency or entity outside the dept to handle
- 15            Formal investigations concerning misconduct for major categories of allegations
- 24-25          Requirements to report to LEA misconduct board
- 30-34          Initial actions at the scene of a major incident
- 48            Scene security and evidence preservation
- 50            Can call on other agencies to collect evidence
- 53-70          Use of Force policy, procedures and incident review
- 71-95          Gives authorization for weapons usage
- 97-102        Major employee involved incidents
- 102           Main paragraph concerning who investigates the employee involved incident

Lindell Smith

Commander Artesia Police Department

575-746-5010

---

**From:** Don Raley  
**Sent:** Monday, December 19, 2016 2:10 PM  
**To:** Lindell Smith <[lsmith@artesianm.gov](mailto:lsmith@artesianm.gov)>  
**Subject:** Fwd: Request for Policies & Procedures Related to Officer-Involved Shooting and Other Use-of-Force Incidents

Hey Lindell,

Can you address this request for me?

Thanks

Don

Begin forwarded message:

**From:** "Montoya, Darlene" <[dmontoya@nmag.gov](mailto:dmontoya@nmag.gov)>  
**Date:** December 19, 2016 at 13:38:08 MST  
**To:** [draley@artesianm.gov](mailto:draley@artesianm.gov)  
**Subject: RE: Request for Policies & Procedures Related to Officer-Involved Shooting and Other Use-of-Force Incidents**

Chief:

Attached please find correspondence from the Law Enforcement Board Subcommittee regarding the above-referenced matter.

If you have any questions or concerns, please do not hesitate to contact me. Thank you.

--

Darlene Montoya, Administrator  
New Mexico Attorney General's Office  
408 Galisteo Street  
Santa Fe, New Mexico 87501  
[\(505\) 490-4854](tel:(505)490-4854)



**Artesia Police Department  
Artesia, NM 88210**



Administrative Personnel Order #002-16

11/07/16

**To: All Personnel**

**From: Chief D Raley**

**Subject: Duty to intervene**

As of the date of this memorandum, the following pieces of policy are in effect. All employees should read and make note of the additions. They shall then proceed to the professional standards unit Dana Dean's office to sign indicating they have read the below policy addition.

ADM02.06

C. Human life, liberty and the pursuit of happiness are important aspects officers of the department are to protect, therefore there is an exception to the requirement of notification in writing of violation of standards and policy: Department employees have a duty to intercede to prevent the use of unreasonable force or a violation of civil rights by another department employee if the witnessing employee has reason to know that unreasonable force is being used or the rights being violated are clear and there is an immediate, realistic opportunity to Intervene to prevent harm or violation. The action required of the witnessing employee will depend on the circumstances surrounding the incident. Appropriate action may include but is not limited to:

1. Verbal or physical Intervention;
2. A direct order (in whatever form) by a supervisor to cease the unreasonable use of force.

D. APD employees have a duty to intercede to prevent the use of excessive force or a violation of civil rights by a member of another agency if the witnessing employee has reason to know that the force being used is excessive or the rights being violated are clear. There must also be an immediate, realistic opportunity to intervene to prevent harm or violation. The action required of the witnessing APD employee will depend on the circumstances surrounding the incident. Appropriate action may include but is not limited to:

1. Denial of promotion;
2. Refusal to hire;
3. Denial of job benefits;
4. Demotion, suspension and discharge;
5. Threats;
6. Intimidation;
7. Exclusion.

**ADM06.09 INVESTIGATIONS AND INQUIRIES GENERALLY:**

A. Complaints deemed appropriate by the Chief of Police for investigation by an investigator of the PSU will be handled with all the rights of employees and responsibilities of investigators strictly followed as outlined in this policy. These rights are known by the investigator through training received, experience and through applicable case law. The order to investigate always comes from the Chief of Police or his designee. The categories of complaints that may be investigated include but are not limited to allegations of:

1. Corruption;
2. Brutality;
3. Wrongful use of force;
4. Breach of civil rights;
5. Criminal Misconduct.

B. Complaints or incidents deemed appropriate by the Chief of Police for inquiry by the field supervisor of an employee or member should be handled in the following way unless other direction is received. Additionally, supervisor initiated inquiries will require that the supervisor:

1. Shall gather all pertinent information concerning the incident under inquiry.
2. Shall give any employee that may have committed a minor infraction of department operating procedure an opportunity to present both physical and testimonial evidence concerning the subject of the inquiry. This is not

ARTESIA POLICE DEPARTMENT  
GENERAL OPERATING ORDER # OPR21  
USE OF FORCE

---

Effective Date: 07/28/09

Updated: 02/15/16

**SUMMARY:**

This policy is taken from the Artesia, New Mexico, Police Department's Standard Operating Procedures Manual. The Artesia Police Department recognizes the value of all human life and is committed to respecting human rights and the dignity of every individual. The use of a firearm is, in all probability, the most serious act in which a law enforcement officer will engage. Therefore, officers shall act within the boundaries of law, ethics, good judgment, this use of force policy, and all accepted Department policies, practices and training. The policies and procedures having to do with the use of force are outlined in this policy as fully and completely as possible.

**DOCUMENT TEXT:**

Artesia Police Department  
General Order # OPR21

Subject: Use of Force

**OPR21.01 PURPOSE:**

The purpose of this order is to establish the policy and procedures governing the use of force, in order that force shall be applied in a manner consistent with the provisions of law by officers of the Artesia Police Department.

**OPR21.02 DEFINITIONS:**

- A. CONTROL -- Force used by an officer to influence or overcome the unlawful or physical actions of a subject.

- B. DEADLY FORCE – Any force likely to cause death or great bodily injury.
- C. IMMINENT - An event, absent intervention, that is likely to occur at some point in the near future. Used synonymous with immediate.
- D. LESS-LETHAL FORCE - Measures or equipment such as bean-bag rounds or other propelled impact devices designed to incapacitate without causing death or serious physical injury. However, these measures, even when deployed properly, still possess the potential to cause death or serious physical injury.
- F. LETHAL FORCE --Force which is likely to cause death or serious physical injury.
- G. NON-LETHAL FORCE --Force that is not likely to cause death or great bodily harm.
- H. OBJECTIVELY REASONABLE – This term means that in determining the necessity for force and the appropriate level of force, officers shall evaluate each situation in light of the known circumstances, including, but not limited to, the seriousness of the crime, the level of the threat or resistance presented by the subject, and the level of threat to the community.
- I. PROBABLE CAUSE -- The facts and circumstances that the officer knows or should know, based on reasonable trustworthy information sufficient to warrant a prudent person to act or think in a similar way.
- J. PHYSICAL INJURY – Any injury to a person that is not likely to cause death or great bodily injury to the person, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the person's body.
- K. REASONABLE BELIEF – Facts and circumstances known to the officer at the time, which would cause another reasonable and prudent officer to act or think in a similar way under similar circumstances.
- L . RESISTANCE -- The subject's attempt to evade an officer's attempts to control.
- M. SERIOUS PHYSICAL INJURY - Any bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement, or results in long-term loss or impairment of the functioning of any bodily member or organ.



N. TOTALITY OF CIRCUMSTANCES – The facts and circumstances of an incident, including the severity of the crime at issue, and whether the suspect posed an immediate threat to the safety of the officers, or others, by actively resisting arrest or by flight

O. USE OF FORCE – The amount of effort required to compel compliance by an unwilling subject.

#### **OPR21.03 POLICY:**

It is the policy of the Artesia Police Department that employees shall use only that force which is reasonably necessary to protect the sanctity of human life, preserve and protect individual liberties, and to affect lawful objectives. Officers must be reasonable in their actions when using any type of force. Also, the incident shall be properly documented.

Additionally, it is the policy of the Department that training in the use of force and response to resistance, and training in all other applicable orders as published by the department must be given before an employee is authorized to carry a firearm. The same employee must also be issued a copy of the general orders of the Department before being authorized to carry a firearm.

#### **OPR21.04 PROCEDURE:**

#### **OPR21.05 INITIAL CASE LAW**

A. The United States Supreme Court, in a case entitled *Graham v. Connor*, sets forth the analytical model by which all use of force cases are reviewed. As required by *Graham*, an officer's use of force is assessed by examining the facts and circumstances known to the officer including a review of the following:

1. The severity of the suspect's crimes;
2. The immediacy of the threat posed by the suspect to the safety of the officers or others; and
3. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.



B. As used by Graham, objectively reasonable is much like the related concepts of reasonable suspicion and probable cause. Objective reasonableness requires more than an officer's subjective beliefs about a suspect and the level of threat that the suspect poses. Indeed, an officer cannot base a decision to use force on a hunch, a feeling, or some other unquantifiable belief. This is an objective test which means that the officer's good faith beliefs for taking certain action are irrelevant. Instead, an officer must be able to identify specific and articulable facts. Essentially, an officer must list the information that he or she observed, heard, or otherwise collected through reliable police channels and the source of that information. Just as important, an officer must identify unknowns and why this lack of information is important to an assessment of the suspect's threat level.

C. Based on the specific and articulable facts, an officer can then use his or her training and experience to interpret the known information and reach a reasonable conclusion as to the level of threat posed by the suspect. Stated another way, the conclusion an officer draws about a suspect must be based on the known facts.

D. This process does not deal with hard certainties, but with probabilities. The use of the 20/20 vision of hindsight to analyze an officer's use of force decision is prohibited. This is why the Graham test is called objective reasonableness, not objective certainty.

E. This calculus of reasonableness must embody allowance for the fact that officers are often forced to make split-second judgments-in circumstances that are tense, uncertain and rapidly evolving-about the amount of force that is necessary in a particular situation.

## OPR21.06 SHOWING AND APPLYING FORCE

### A. When to show force

1. Nothing will preclude a member from un-holstering and displaying an appropriate Department issued piece of equipment when the possibility of imminent deadly danger to anyone exists or in order to prevent or in order to be prepared to immediately react to an incident. The officer should identify himself and give basic commands when showing force.

### B. When to Use Force



1. Personnel will use only reasonable force necessary to accomplish lawful objectives. The officer should identify himself and give basic commands when using force as time allows.

2. Medical Aid

a. It is the officer's responsibility to summon emergency medical personnel to administer treatment or render first aid when force is applied if first aid is needed. If applicable, the officer should render first aid until emergency medical personnel arrive. Officers should render first aid consistent with knowledge and training, taking into consideration the seriousness of the injury. Their own safety should always be taken into account.

b. Injuries occurring during use of force incidents will be documented using photographs. The employee's injuries must be photographed as well. The general condition of suspects and officers involved in a use of force incident shall be photographed including clothing, shoes, blood stains (if any), the condition of the ground in the area where the incident took place and any other pertinent objects or areas.

c. The suspect's refusal to receive medical aid by either emergency medical personnel or emergency room personnel should be documented in written police reports. If possible, a copy of the refusal forms should be gained and entered into the records management system as an attachment to the report.

C. Whenever any type of force is used or any action is taken that results in the injury or death of a person, the member using the force will, immediately or immediately after the situation or person is brought under control, notify a supervisor to respond to the scene.

D. During interactions with subjects, the officer must always assess:

1. Cover;
2. Distance;
3. Assistance;



4. Retreat.

E. The use of lethal force will not preclude the use of proper restraint devices once the situation has been de-escalated.

F. Any officer involved in a use of force incident resulting in great bodily injury or death shall be placed on administrative leave with pay for at least three days. This is intended to provide time for the involved officer(s) to recover from the physical, mental, and emotional stress of the incident.

G. Employees are prohibited from using a lateral vascular neck restraint (i.e., "choke hold").

#### OPR21.07 LEVELS OF FORCE

##### A. Parameters for Use of Deadly Force

1. After weighing the respective interests of law enforcement and the suspect, the United States Supreme Court, in a case entitled Tennessee v. Garner, held that the Fourth Amendment authorized a police officer's use of deadly force in the following circumstance:

a. Where the officer has probable cause to believe that the suspect poses a threat of serious physical injury, either to the officer or others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical injury, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.

2. The Supreme Court, in Garner, also prohibited the use of deadly force in the following circumstance:

a. The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. It is no doubt unfortunate when a suspect who



is in sight escapes, but the fact that the police arrive a little late or are slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, non-dangerous suspect by shooting him dead.

3. Accordingly, police officers are authorized to use deadly force, by any means, to:

- a. Protect themselves or others from an immediate threat of serious physical injury;
- b. Prevent the escape of a felony suspect who the officer has probable cause to believe that the suspect poses an immediate threat of serious physical injury to the officers or others if allowed to escape.

4. The preferred methods in dealing with deadly force situations are those the officer has been properly trained on and/or qualifies with.

5. Officers may also discharge a firearm under the following circumstances:

a. To safely destroy an animal that represents a threat to public safety or as a humanitarian measure where the animal is seriously injured;

i. If an animal is injured or killed by a department member using a firearm, the member will contact his supervisor immediately and notify them of the situation. The Department Humane Officer will be requested to respond and handle the injured or dead animal. The member will make a concerted effort to contact the owner. The member will make a detailed written police report surrounding the circumstances before his tour of duty is over.

b. During qualifications, range practice or sporting events.

6. Employees should not discharge a firearm at or from a moving vehicle unless it is necessary to protect himself or another from what is reasonably believed to be an imminent threat of death or serious physical injury.

7. When the only means of an assault on an officer is by motor vehicle, officers:

- a. Must place him or themselves in the most tactically safe position possible.
- b. Will not purposely place themselves in the path of a fleeing or aggressively driven vehicle to justify the use of deadly force.

8. Where feasible, some verbal warning should be given prior to engaging in the use of any force. However, warning shots from a firearm are prohibited.

9. Officers should assess the incident as best as is reasonably possible in order to determine if de-escalation techniques will be able to bring the incident under control in a safe manner. If possible and safe such de-escalation techniques should be used.

#### B. Parameters of Use of Less-Lethal Force

1. In circumstances where lethal force is not authorized, officers should assess the incident in order to determine how to best de-escalate and bring the incident under control in a safe manner. Assessment may include: potential for officer or offender injury, degree of aggression by the suspect, number of suspects, possibility of escalation, number of bystanders, and potential for secondary exposure of bystanders.

2. Police officers are authorized to use reasonable less-lethal force techniques and equipment for resolution of incidents, as follows:

- a. To protect themselves or another from physical injury;
- b. To restrain or subdue a resistant individual;



c. To bring an unlawful situation safely and effectively under control.

3. Less-lethal force may be used in situations where the officer reasonably believes that the suspect poses a serious threat of serious physical injury. Less-lethal force may be used even though the subject does not pose an immediate threat of serious physical injury.

4. Less-lethal force is not designed as a substitute for lethal force but, rather as an alternative in some instances.

5. Less-lethal force currently consists of the use of equipment and/or techniques to incapacitate individuals without causing death or serious physical injury. However, these measures, when deployed properly, still possess the potential to cause death or serious physical injury.

#### OPR21.08 FOOT PURSUITS AND THEIR RELATION TO USE OF FORCE

A. It is important to establish a balance between protecting the safety of the public and police officers during police pursuits on foot and law enforcement's duty to enforce the law and apprehend suspects. Officer and public safety shall be the overriding consideration in determining whether a foot pursuit will be initiated or continued. After all, use of force or the potential for use of force is magnified by the disparity of the numbers of people and/or poor decision making before and during foot pursuits or other conflicts between officers and suspects.

B. Although it is an officer's decision to initiate a stop, it is the suspect or violator's decision to precipitate a foot pursuit by fleeing. An officer's decision to pursue on foot shall be made with an awareness of, and appreciation for, the risk to which the officer and others will be exposed. Officers and supervisors who choose not to engage in foot pursuits or who choose to terminate an ongoing foot pursuit consistent with this order will be strongly supported in any subsequent review and should not be criticized or disciplined. However, where necessary, an officer may pursue, on foot, persons who he reasonably believes have committed an act that would warrant a stop, investigative detention or arrest.

C. In deciding whether or not to initiate a foot pursuit, an officer shall consider these and any other lawful and reasonable alternatives:

1. Containment of the area;
  2. Saturation of the area with personnel;
  3. Apprehension at another time and place when the officer knows the identity of the subject or has other information that would likely allow for later apprehension.
- D. An impending use of force scenario is likely during or at the end of a foot pursuit. Therefore, officers shall consider the following risk factors in deciding whether to initiate or continue a foot pursuit:
1. Acting alone;
  2. In an unfamiliar area;
  2. In an area that is hostile, such as a notorious drug trafficking location;
  3. Pursuing suspects who are known to be or suspected of being armed;
  4. Pursuing more than one person;
  5. Being unable to obtain backup in a timely manner;
  6. Not in adequate physical condition to conduct a foot pursuit,
  7. Being unable to establish and maintain contact with the REDA; or
  8. Pursuing in inclement weather, darkness, or reduced visibility conditions.

#### E. Initiating Officer's Responsibilities

1. Officers initiating foot pursuits shall be in field command and shall bear operational responsibility for the foot pursuit unless circumstances dictate otherwise or until relieved by a supervisor.
2. The officer initiating a foot pursuit shall, as soon as practical, provide information such as his unit number, reason for the foot



pursuit, location and direction of pursuit, number of suspects and description and whether or not the suspect(s) is armed.

#### F. Foot Pursuit Coordination

1. The primary (initiating) officer shall immediately coordinate—directly or indirectly through the REDA—with secondary officers to establish a perimeter in the area to contain the suspect(s).
2. Generally, the primary officer shall not try to overtake the fleeing suspect but shall keep him in sight until sufficient manpower is available to take him into custody.
3. Assisting officers shall immediately attempt to contain the pursued suspect. Such officers shall not respond to the primary officer's location unless the suspect has been stopped and the primary officer requests assistance to take the suspect into custody.
4. When two or more officers are in pursuit, they shall not separate unless they remain in sight of each other and maintain communication, but they shall allow the lead officer to concentrate on the suspect's actions while the second officer provides backup and maintains communications with dispatch and other assisting officers.

#### G. Restrictions

1. The pursuing officer shall terminate a pursuit if so instructed by a supervisor.
2. Unless there are exigent circumstances such as an immediate threat to the safety of other officers or civilians, officers shall not engage in or continue a foot pursuit under the following conditions:
  - a. If the officer believes the danger to pursuing officers or the public outweighs the necessity for immediate apprehension.
  - b. If the officer becomes aware of any unanticipated circumstances that substantially increases the risk to public safety inherent in the pursuit.

- c. The suspect enters into buildings, structures, confined spaces, or otherwise isolated areas without sufficient backup being present and presence of personnel to contain the area. The primary officer shall stand by, radio his or her location, and await the arrival of officers to establish a containment perimeter. At this point, the incident shall be considered a barricaded or otherwise noncompliant suspect. Officers shall consider using specialized units or crisis response team.
- d. If the officer loses possession of his firearm or any other vital equipment.
- e. If the suspect's identity is established or other information exists that allows for the suspect's probable apprehension at a later time and there is no immediate threat to the public or police officers.
- f. If the suspect's location is no longer known.
- g. If primary officers lose communications with REDA or communication with backup officers is interrupted.
- h. If an officer or third party is injured during the pursuit who requires immediate assistance and there are no other police or medical personnel able to render assistance.
- i. If the officer is unsure of his or her own location or direction of travel.
3. When the pursuing officer terminates the pursuit he or she shall notify REDA with his or her location and request any assistance deemed necessary.

#### H. Supervisor Responsibilities

1. Upon becoming aware of a foot pursuit, the supervisor shall decide as soon as possible whether pursuit should continue.
2. The foot pursuit can continue if:

- a. There at least two officers working in tandem and there is a reasonable belief that the suspect has committed an act that would permit the officer to detain the suspect;
  - b. There is a reasonable belief that the suspect poses an immediate threat to the safety of the public or other police officers; or
  - c. The pursuit does not violate provisions of this or related department policy, procedures, or training.
3. The supervisor shall terminate a foot pursuit at any time he or she concludes that the danger to pursuing officers or the public outweighs the necessity for immediate apprehension of the suspect.
4. The supervisor shall take command, control, and coordinate the foot pursuit as soon as possible. As in any tactical incident, the supervisor does not have to be physically present to assert control over the situation. Once the foot pursuit has concluded, the supervisor shall proceed to the terminus of the pursuit to assert post-pursuit proceedings as needed.

#### I. REDA Responsibilities

- 1. Upon being notified that a foot pursuit is in progress, communications personnel shall immediately notify the field supervisor and provide all available information.
- 2. Communications personnel shall carry out the following responsibilities during a foot pursuit:
  - a. Receive, record, and immediately report incoming information on the pursuit, the officers involved and the suspect.
  - b. Control all radio communications and clear the radio channels of all nonemergency traffic.
  - c. Coordinate and dispatch backup assistance and air support units under the direction of the field supervisor.

**OPR21.09 USE OF FIREARMS AND USE OF FORCE RESULTING IN DEATH:**

- A. Whenever a member discharges a firearm on or off duty, other than for training or recreational purposes, the member will notify his supervisor of the incident immediately. This will include all incidents involving accidental or unintentional discharge of any firearm registered with the department as a primary firearm, secondary or back up firearm, shotgun, rifle or off duty firearm as well as firearms owned personally by the member. The supervisor will respond to the scene of the incident, inform the next level in his chain of command of the circumstances and await further instructions. This only after ensuring aid has been rendered, evidence has been preserved and witnesses have been separated and identified.
- B. The Professional Standards Unit will be notified any time a weapon is discharged by sworn personnel of the Department, excluding training or recreational activities. The Chief of Police will order an administrative investigation be done. Professional Standards Unit Investigator(s) will respond to police shootings where injury is involved no matter the agency tasked with investigating the initial criminal act(s) involved.
- C. When death or injury results from a control of person's incident, the Criminal Investigations Division will be called to investigate the incident or help determine and call the proper agency to investigate. At any rate the organization designated to investigate the incident will come from the Chief of Police or his command staff.
- D. It is the responsibility of the member involved in a use of force incident (using any force) to report it to his or her Shift Supervisor immediately after the incident is brought under control. The Shift Supervisor will notify the appropriate Commander. Any time a member uses force or takes any action which results in alleged or actual injury or death, he or she will be required to submit a written police report documenting the incident unless word is received otherwise from an appropriate supervisor. It will be the responsibility of the Shift Supervisor to assure that the chain of command, up to and including the Chief of Police, are notified whenever a police officer is involved in a shooting incident or an in-custody death occurs.
- E. If a death has resulted from a use of force incident, the officer will be removed from any line duty assignment, pending the results of an administrative review.

**OPR21.10 USE OF FORCE REPORTING AND REVIEW:**

A. Guides may be issued and used to assist with writing reports. Any Written Police Report narrative concerning use of force or response to resistance shall contain:

1. A detailed description of the events leading to the necessity for the use of action (such as the legal justification; the suspect's aspects, behavior and statements; officer knowledge of suspect history; dialogue between officers and suspect; and the physical attributes as well as the training and experience level of the officers);
2. The amount and type of force used;
3. The nature and extent of any injuries and treatment rendered to the officers and subjects;
4. The identity of combatants, officers involved, witnesses and medical personnel involved, if applicable; and
5. Any and all other pertinent information (such as environmental conditions (lighting, weather...) and the specific uniform worn by officers involved).

B. A hands on subject incident checklist should be completed by each officer involved in the incident. Should the officer not complete a hands-on checklist for any reason when one is required, he will be contacted by the appropriate supervisor immediately by phone or in person. He will then respond within one hour to complete the checklist or face disciplinary action. The hands on checklist package does not become a part of a police report package. Instead, it is accomplished alongside the written police report already required. Should a problem or issue be discovered concerning the hands on subject incident of any type, the first reviewing officer who discovers the problem will immediately make the chain of command aware of it. Even though this report is made, the hands on subject review process still continues. Using the hands on subject checklists as a starting point, the incident will be reviewed by PSU personnel and a determination will be made: First, as to whether the laying of hands on the person was lawful; Second, as to whether the incident was within or out of policy; Third, as to whether the officer's actions were appropriate and reasonable to the incident; and Finally, whether or not a recording of the incident is available. The package is then logged and filed in the hands-on



tracking system if it is deemed acceptably handled. If the incident is deemed to be questionably handled, it will be marked as such and then will be referred to the Command staff and the office of the Chief of Police to handle or disperse appropriately. The package is always delivered back to the Professional Standards Unit where it is logged and stored in an easily reviewable manner.

C. The only time there may not be a Hands on Subject Incident Checklist accomplished to accompany an arrest or person taken into police custody for some reason may be when the subject was charged with further crimes (via warrant for example) and was already in a holding center or jail. An arrest report narrative is still made in the Records Management System.

D. If an officer is unable to write any part of the report, his supervisor will ensure the necessary report is properly prepared and forwarded.

E. The incidents (including any off duty incidents) which require a written police report narrative and hands-on subject checklist from every employee involved are listed below. Any employee witnessing these types of incidents is also required to submit a written police report with the involved officers named. Additionally, if one or more of the below actions is taken, the subject of the actions listed below should be charged with a crime if force is used.

1. When an employee uses any degree of touching, force or physical restraint which, by the nature of its use, causes, or has the likelihood to cause bodily injury, serious bodily injury, or death or has a likelihood to cause a complaint of bodily injury or serious bodily injury, although no visible injury is present. For clarity: if an employee touches a person to take action or endure a crime is not committed, this report package is made. This excludes fingerprinting, normal transport duties for detention personnel unless a physical confrontation ensues;
2. When an employee touches or strikes a person either with personal weapons or impact weapons or shows those weapons in a manner that would lead a person to believe they may be used;
3. When an employee uses OC spray or a chemical agent or shows those weapons in a manner that would lead a person to believe they may be used;

4. When an employee uses force pertaining to the PepperBall weapons system or shows this weapon in a manner that would lead a person to believe it may be used;
5. When a Police Officer uses a TASER in the lawful discharge of his duties or shows this weapon in a manner that would lead a person to believe it may be used;
6. Whenever a person is touched by a police canine for apprehension or when an officer shows a canine in a manner that would lead a person to believe it may be used;
7. When a Police Officer points a firearm at a person within the scope of his law enforcement authority;
8. When a Police Officer displays his/her firearm while not in uniform but in the presence of a suspect or the public;
9. When a Police Officer discharges a firearm in his/her law enforcement authority, for other than training or recreational purposes including at an animal;
10. When any other type of improvised weapon is shown or used;
11. When a Police Officer verbally threatens a person with any force.

F. Incidents occurring concerning a person who could be put in one or more of the above categories but were not brought to the Temporary Holding Center for booking are to have a Hands on Subject Incident Checklist and accompanying written police report completed and cycled through the review system involving the PSU.

G. It will be the responsibility of the Shift Supervisor of the involved member to insure completeness of any use of force written police report. In the absence of the supervisor from the involved member's shift, the Shift Supervisor from another shift, will insure the completeness of the report.

1. If the use of force report is written by a Shift Supervisor who is not on the same shift as the member involved, the report will be submitted through the chain of command of the shift in which the member works.



H. Use of force concerning animals should be handled using written police reports forwarded through the chain of command appropriately.

**OPR21.11 CONTINUOUS ANALYSIS:**

A. The Professional Standards Unit, will continually analyze all uses of force for the purpose of:

1. Ensuring reasonable use of force by departmental personnel;
2. Ensuring training effectiveness;
3. Ensuring policy effectiveness;
4. Identifying equipment in need of upgrade or replacement;
5. Identifying personnel in need of additional training;
6. Maintaining statistical date which is consistently reviewed.

**OPR21.12 FORWARDING OF INJURY AND ACCIDENTAL DISCHARGE REPORTS:**

A. All use of force reports involving injury and accidental discharge memorandums will be forwarded to the Professional Standards Unit. This will take place after the appropriate division commander and the Chief of Police have reviewed all reports and memorandums connected with these incidents. The Chief of Police will make the final decision on what action to take concerning the incident with in. If an Internal Affairs Investigation is required, the Professional Standards Unit Commander will be notified by the Chief of Police.

**OPR21.13 FAILURE TO FOLLOW ORDERS:**

A. Action taken for violations of this general order will depend on the degree of severity, record of the offender and the seriousness of consequences of the action. This may include progressive discipline up to and including termination except where otherwise noted or mandated within this order.

ARTESIA POLICE DEPARTMENT  
GENERAL OPERATING ORDER # OPR32  
EMPLOYEE INVOLVED FATAL INCIDENTS

---

Effective Date: 04/27/10

Reviewed no changes made: 02/15/16

**SUMMARY:**

This policy is taken from the Artesia, New Mexico, Police Department's Standard Operating Procedures Manual. Because of the sensitivity of incidents having to do with fatalities involving Department employees, this document explains the policies and procedures having to do with them as fully and completely as possible.

**DOCUMENT TEXT:**

Artesia Police Department  
General Order # OPR32

Subject: Employee Involved Fatal Incidents

**OPR32.01 PURPOSE:**

The purpose of this order is to establish policy and procedure for the instances where employees of the Department become involved in a fatal incident when performing in their duties.

**OPR32.02 DEFINITIONS:**

- A. ACTOR -- a person whose act is a proximate cause of a fatal injury to another person or a person who intends that his act be a proximate cause of serious bodily injury or death to another person who is actually killed by another.
- B. ADMINISTRATIVE INVESTIGATORS -- those investigators assigned by the Employer Agency to conduct the Administrative Investigation of the Incident.
- C. CRIMINAL INVESTIGATORS -- those investigators assigned by or asked to respond to conduct the criminal investigation of the Incident.

**D. EMPLOYEE -- members of the Department and certain other people as follows:**

1. Full-time, part-time, and hourly sworn officers, Reserve, Mounted Patrol, whether on-duty or off-duty, and whether acting for a law enforcement or a private purpose at the time of the Incident;
2. Full-time unsworn employees who are on-duty at the time of the Incident, or who are acting actually, apparently or purportedly for a law enforcement purpose at the time of the Incident;
3. Part-time unsworn employees: same as above, full-time unsworn;
4. Reserve police or Mounted Patrol officers who are on-duty or who are acting actually, apparently or purportedly for a law enforcement purpose at the time of the Incident;
5. Temporary employees and volunteers whether paid or unpaid, who are on-duty or who are acting actually, apparently or purportedly for a law enforcement purpose during the Incident. This category includes Informants when they are working under the direct control and supervision of a police officer.

**E. FATAL INJURY -- death, or injury which is so severe that death is likely to result.**

**F. PROXIMATE CAUSE -- cause which, in a natural and continuous sequence, produces the fatal injury, without which cause the injury would not have occurred, reasonable ability to foresee the situation not included**

**G. VICTIM -- The person who is injured by the act of the Actor, whether or not intentionally. When used in this Protocol, this word does not imply existence of criminality; it is used simply to designate the person who is physically injured or deceased.**

**OPR32.03 POLICY:**

It is the policy of the Artesia Police Department that fatal incidents involving its employees be investigated fairly, accurately and in a timely fashion and that if crimes occur within these incidents, the crimes are properly brought to justice.

**OPR32.04 PROCEDURE:****OPR32.05 EMPLOYEE INVOLVED FATAL INCIDENTS GENERALLY:**

- A. Employee involved fatal incidents are incidents surrounding an action taken by an employee of the Department in which a Department employee is involved as an actor, victim or custodial officer, where a fatal Injury occurs. Such incidents include but are not limited to the following:



1. Intentional and accidental shootings, including police tactical incidents involving specialized response teams;
2. Intentional and accidental use of any other dangerous or deadly Weapons;
3. Assaults upon police officers; assaults on other police employees who are on duty or are acting for a law enforcement purpose;
4. Attempts by Department employees to make arrests or to otherwise gain physical control for a law enforcement purpose;
5. Physical altercations, mutual combat, and domestic violence in which the police employee is acting in a private citizen capacity;
6. Any fatal injury in police custody, but excluding fatal injuries of prisoners which occur while the inmate is under physician's treatment for a disease or other natural condition which has been diagnosed prior to death and which does not involve custodial trauma, custodial suicide or custodial ingestion of toxic substance;
7. Any fatal injury to a person who is a passenger of a Department employee (such as ride-alongs, emergency transports, etc.);
8. Vehicular crashes, and specifically:
  - a. Including any vehicle fatality which occurs:
    - i. After, although not necessarily as a proximate cause of, Department employee gunfire directed at the suspect or the suspect vehicle;
    - ii. In connection with use of vehicle(s) by a Department employee as an enforcement intervention technique intended to apprehend a suspect. (Enforcement intervention includes vehicle ramming, roadblocks, and forcing a vehicle to alter its course by cutting in front of it or by contact.);
  - b. Excluding any vehicle fatality which involves:
    - i. Off-duty non-sworn police employees who are not at the time of the Incident acting for an actual, apparent or purported law enforcement purpose;
    - ii. Solo vehicular crashes in which the only injury is suffered by a Department employee who was the driver and sole occupant of a vehicle which was not involved in a crash with any other occupied vehicle;



iii. Pursuits wherein the suspect vehicle which is being pursued by Department vehicle(s) crashes with another vehicle, a pedestrian or an object, where that crash did not result from contact between the suspect vehicle and a Department vehicle or from enforcement intervention.

B. Investigations of fatal incidents involving Department employees often place extraordinary demands upon the individuals and agencies involved. These cases tend to attract considerable interest from segments of the public and from the news media. The public's right to know what occurred may require balancing with investigative necessity, rights of privacy, or rights to a fair trial. Doubts may be expressed by some about the propriety of the Department conducting investigations of fatalities which involved their own employees as actors or victims.

C. The individuals and agencies involved in such fatal incidents, as well as those involved in the subsequent investigations, must realize that each incident has potential social, civil, administrative, and criminal consequences. Incident investigators and agency managers must understand the legal right, obligations, and authority of the agencies and individuals involved. They must specifically recognize and reconcile police officers' constitutional rights against their rights and obligations resulting from the employer/agency relationship.

D. Confusion and even conflict can occur among individuals and agencies based upon their different interests, duties, perspectives, authority, training, and resources. Unless resolved in advance, questions such as who conducts the investigation, what type of investigation should be performed, and who can be present when an involved employee is interviewed, can delay and compromise investigations.

#### OPR32.06 INVOCATION OF THIS PROTOCOL:

- A. Upon the occurrence of an Employee-Involved Fatal Incident, this Protocol is automatically effective immediately upon the occurrence.
- B. The Department may, of course, investigate the matter by itself or may seek aid from other agencies.

#### OPR32.07 PUBLIC SAFETY STATEMENTS:

A. A Public Safety Statement is a statement made by a Department member having a direct part in an incident concerning the use of deadly force by firearms to a supervisor who was not present during the incident. The purpose of the statement is to enable the supervisor to determine what immediate action is needed to find and protect injured persons, identify and apprehend the suspect, locate witnesses, protect the scene and its evidence and otherwise manage the emergency. Once the emergency and tactical matters have been resolved,



questioning of the employees is no longer part of the Public Safety Statement and should be left to the criminal and administrative investigators in a fitting interview environment.

B. A Department employee involved in a firearms related deadly force scenario is ordered to give his statement by answering the below listed questions and is not permitted to await representation or refuse to make the statement. The first uninvolved supervisor on scene must ask the following questions of the Department member as soon as possible as part of his or her emergency management duties. This conversation shall be recorded.

1. Were you involved in an officer-involved shooting?
2. How many rounds did you fire and in what direction did you fire them?
3. Where were you when you fired them?
4. Did any other officers fire any rounds? If so, whom, and where were they when they fired?
5. Is it possible the suspect fired rounds at you? If so, from what direction were the rounds fired?
6. Are there any suspects outstanding? If so, describe them, their direction and mode of travel, and how long ago they left. What crime(s) are they wanted for? What are they armed with?
7. Is anyone injured? If so, where is he or she?
8. Who witnessed this? Where can we find them?
9. Are there any weapons or evidence that need to be secured and protected? If so, where are they?

#### OPR32.08 INVESTIGATIVE AGENCIES, FORMATS AND RESPONSIBILITIES:

A. To properly recognize and accommodate the various interests and the various rules of law which may be involved in any incident, investigations of these matters must be performed under two separate investigative formats: the Criminal Investigation; and the Administrative Investigation.

B. The Criminal Investigation:

1. And the selection of the primary investigator(s) is of great importance. Generally, the best available investigator should receive the assignment. These qualifications are important:



- ( )
- ii. If criminal conduct does exist, determine the identity of the person(s) responsible for that conduct; and
- iii. If criminal conduct does exist, determine the degree of the crime(s); the existence of any factual or legal defenses to that crime; and to determine the presence or absence of any factors which would mitigate or aggravate punishment for that crime.
- b. To incidentally provide factual information to the Chief of Police for his internal use.
5. The investigation is required to follow the rules of law which apply to all criminal proceedings including constitutional, statutory and case law regarding rights which are covered by the United States Constitution.
6. It is performed in a manner that provides both the appearance and the reality of a thorough, fair, complete and professional investigation which is free of conflicts of interest.
7. The Criminal Investigators may be divided into one or more teams (the number depending upon the complexity of the incident and upon the number of people to be interviewed). The criminal investigation will be led by a law enforcement agency of the Chief of Police's choosing. This may include employees of the Department.
8. Venue Determination:
- a. When an incident occurs involving Department employees in two or more jurisdictions, the venue shall be determined and it shall be immediately decided by the Department and any other agency involved who will conduct the investigation.
9. Vehicle collision Incidents:
- a. Vehicle crash fatalities involving Department employees shall be investigated by properly qualified Investigators. The accident investigation specialists have the primary responsibility for documentation, collection and preservation of physical evidence.
- b. If the fatality results from a collision that was not accidental (e.g. use of enforcement intervention techniques), or if vehicle movement was merely incidental to a fatality which was caused by non-vehicular means, the accident investigation specialists may be used by the Criminal Investigators for that phase of the investigation, but their role will be limited to investigation of physical movement of the vehicle(s) and to collision reconstruction.

**10. Scene Security:**

a. The Department has initial responsibility for immediately securing incident scene(s) within its territorial jurisdiction. This responsibility includes preservation of the integrity of the scene(s) and its/their contents, access control, and the identification and sequestration of witnesses. Responsibility may be changed by mutual agreement as the investigation progresses.

**11. Responsibility for physical evidence collection, preservation and analysis:**

a. The agency having primary control over the investigation has the responsibility for documentation of the scene(s) and for the collection, preservation and analysis of physical evidence except in some vehicular fatalities. The agency having primary control also has the option to ask the Department of Public Safety Crime Laboratory for assistance if it is deemed necessary. In any case these trained and experienced evidence collection employees will have full responsibility for evidence work.

b. Prior to final relinquishment of the scene, the Investigators will provide the Administrative Investigators an opportunity to assess the need for further evidence processing.

**12. Scene Procedures:**

a. Emergency life saving measures have the first priority;

b. If a person is transported to a hospital with fatal injuries an officer should accompany that injured person in the same vehicle in order to:

i. Locate, preserve, safeguard and maintain the chain on physical evidence;

ii. Obtain a dying declaration; a spontaneous statement; a contemporaneous statement; a statement of then-existing or previous mental or physical state;

iii. Maintain custody of the person if he has been arrested;

iv. Provide information to medical personnel about the incident as relevant to treatment, and obtain information from medical personnel relevant to the investigation;



- v. Identify relevant people, including witnesses and medical personnel;
- vi. Be available for contacts with the victim's family, if appropriate;
  - 1) Speculation of causation relevant to the fatality is not to be discussed with family members except as deemed necessary by the Chief of Police.
- c. The scene(s) must be secured immediately with a perimeter established for each a sufficient distance away to safeguard evidence. In some circumstances an inner and an outer perimeter are appropriate.
  - i. Access to the scene(s) must be limited to only those officials who must enter for an investigative purpose;
  - ii. A written log will be established as quickly as possible to identify all persons entering or exiting the scene(s), the time of their entry and exit, and the reason for entry;
  - iii. When not needed for life savings efforts, entry by fire and ambulance personnel should be restricted to the absolute minimum necessary to perform the needed duties;
  - iv. No items shall be moved inside the scene(s) or removed from a scene unless absolutely necessary for public or officer safety or for preservation of evidence. If removal without approval is necessary, the removal should be witnessed and must be logged. The log shall state the identity of the person removing the described object, the reason for removal, a witness to the removal, and the time of removal. The item should be photographed prior to removal.
- d. If any type of weapon or instrument was involved in the fatal incident, the supervisor at the scene will promptly see to the security and/or collection of such items, as follows:
  - i. If the area is secure, loose weapons or instruments shall be left in place and undisturbed.
  - ii. If the area is not secure, the supervising officer at the scene shall decide whether the items can be safely left in place or whether prompt removal is necessary. If such items must be moved or removed for protection, they should be



photographed in place prior to removal if possible. If possible, measurements of the item(s) location should be noted on a diagram.

iii. If an involved officer still has personal possession of a weapon he used in the Incident, the supervising officer at the scene shall promptly but discretely (i.e. in private, out of view of the public and other officers if possible) obtain possession of the weapon. Sidearms must not be removed from their holsters; obtain the entire gunbelt if necessary to avoid removing the weapon from its holster. Sidearms should be replaced by the supervisor as quickly as possible if the officer so wishes, unless reason dictates otherwise.

iv. In shooting cases, the supervisor present will check the firearms of all officers who were present at the time of the Incident to ensure that all discharged firearms are identified and collected, and to specifically document those weapons which were not fired.

v. The employee collecting any weapon or instrument will make note of its readily visible general description and condition, the appearance and the location of any trace evidence adhering, to the extent these observations can be made without removing a firearm from its holster or otherwise compromising physical evidence. The location where the weapon or instrument was first observed by the supervising officer, and the identity of the person or location from which the weapon or instrument was received shall also be recorded.

1) In firearms cases, the supervising officer will also make note of whether the firearm is cocked, has its safety on or off, has its hammer back, any apparent jamming of either fired or unfired ammunition; the location and position of the weapon's magazine (e.g. fully or partially inserted, completely separate from the firearm, missing, etc.), to the extent possible without removal of the weapon from its holster. If the mechanism of a firearm is obviously jammed, no attempt shall be made to unload the weapon or clear the jam. If the firearm is cocked (or if a semi-automatic pistol cannot be determined to be cocked or not), the safety may be put on by the supervising officer, who must make note of that fact. If the firearm's hammer is back, it may be lowered but note must be made of that fact.







contemplated immunity is not warranted. The desired immunized statement may not actually be necessary or independent alternative means may exist to obtain the information. Authority within the Department to grant administrative immunity may need to be defined. When immunity is given, it must be carefully and narrowly defined in writing or on audio tape and agreed to by all affected parties.

- 2) If and when the interview becomes a custodial interrogation, Miranda rights are applicable.
- 3) To insure proof of voluntariness in a non-custodial interview, interviewers may wish to advise certain interviewees that they are not in custody and are free to leave at any time and that they are not obligated to answer any questions asked by the investigators and no punitive action will be taken against the interviewee if he refuses to be interviewed.
- 4) Police employees have the same rights and privileges regarding interviews that any other citizen would have, including the right to consult with a representative prior to interview and the right to have the representative present during the interview. The representative should be allowed to consult about the facts of the incident privately with only one police employee at a time.

#### 14. Intoxicant Testing:

- a. During a Criminal Investigation, Department employees have the same rights and privileges that any civilian would have regarding intoxicant testing. When Investigators determine that a Department employee's state of sobriety is relevant to the investigation, they have these options:
  - i. Obtain the blood and/or breath sample by valid consent;
  - ii. Obtain the blood and/or breath sample incidental to valid arrest;
  - iii. Obtain a search warrant.
  - iv. When applicable, utilize Vehicle Code section 66-8-107 for vehicular driving Incidents.



b. During an Administrative Investigation:

- i. Intoxicant test results obtained by Criminal Investigators are available to the Administrative Investigators.
- ii. In the event the Criminal Investigator does not obtain samples for intoxicant testing, the Department may then seek to obtain samples. Criminal Investigators have the first opportunity however.
  - 1) Authority for the Department to obtain samples includes either valid consent, or ordering the employee to provide the samples based on the employment relationship.

c. Miscellaneous

- i. Samples should be collected promptly after the Incident for most meaningful results.
- ii. A police employee may volunteer to provide sample(s) for intoxicant testing even if Criminal and Administrative Investigators have not obtained samples. Similarly, a person from whom Criminal or Administrative Investigators have obtained samples may request that another sample be taken for independent testing. The taking of this sample and subsequent testing will not be at the expense of the Department. Such a request will be promptly honored.

15. Autopsy:

- a. At least one member of the Criminal Investigative team will attend the autopsy.
- b. The Forensic Pathologist will receive a complete briefing prior to the post mortem examination. This briefing, which includes all information known to that time which may be relevant to the cause, manner and means of death shall be attended by at least one Criminal Investigator.
- c. The Medical Examiner's Office has the responsibility for documenting and collecting physical evidence. In vehicular crash deaths the Accident Investigator Specialist has the responsibility with assistance if appropriate from the Crime Laboratory.

16. The District Attorney's Office:



a. The District Attorney's Office has the following roles in incident investigations:

- i. Participate co-equally with the Criminal Investigators;
- ii. Assist and advise the Criminal Investigators on various criminal law issues which may arise, such as Miranda, voluntariness, search and seizure, probable cause to arrest, detentions and releases, elements of crimes, immunity, legal defenses;
- iii. Upon completion of the Criminal Investigation, analyze the facts of the Incident as well as the relevant law to determine if a crime or crimes were committed and if so, prosecute as appropriate.

b. The District Attorney has his own separate investigative authority. When deemed appropriate by the District Attorney (or his designated alternate in his absence), the District Attorney's Office may perform an independent investigation separate from the Criminal Investigator.

17. Report writing:

- a. All criminal investigators will write reports documenting their participation in the investigation.
- b. The investigators will allocate and divide among themselves the responsibility for documenting interviews and observations.
- c. The Department has the ultimate responsibility for report writing and for collecting reports from other agencies.
- d. Prompt completion of reports is essential.

C. Administrative Investigation:

1. In addition to its concern about possible criminal law violations by civilians and its own employees who are involved in an incident (which concerns are addressed by the Criminal Investigation), the Department also has need for information about the incident for non-criminal purposes:

- a. Internal Affairs: Determination of whether or not the Department's employees violated Departmental regulations;
- b. Agency Improvement: Determination of the adequacy of Department policies, procedures, programs, training, equipment, personnel programs and supervision.



- c. Government and Community Relations: Informing itself of the Incident's details so it may adequately inform its parent governmental body, and so it may be responsive to comments about the Incident from the public and the media;
  - d. Claims and Litigation: Preparing for administrative claims and/or civil litigation that may be initiated by or against the agency.
2. The Department may use an Administrative Investigation and/or a more specific civil litigation investigation format to investigate these concerns as it considers appropriate. While both the Criminal Investigation and the Administrative Investigation are important and should be aggressively pursued, investigative conflicts between the two formats shall be resolved by allowing the Criminal Investigation to have investigative priority. It is intended that this prioritization will preclude competition between the two formats for access to witnesses, physical evidence, and the involved parties, and that it will prevent the Criminal Investigation from being compromised by an untimely exercise of the Department's administrative rights.
3. The initiation of Administrative Investigations and the extent of those investigations is solely the responsibility of the Department.
4. Interview statements, physical evidence, toxicology test results and investigative leads which are obtained by Administrative Investigators by ordering police employees to cooperate shall not be revealed to Criminal Investigators except when the District Attorney feels it is necessary. He will do this only after careful consideration about the consequences of such a decision. Other results of the Administrative Investigation may or may not be privileged from disclosure to others, including the Criminal Investigators, depending upon applicable law.
5. The Department should immediately assign at least one Administrative Investigator upon being notified of the incident. This officer can function as a liaison between the Department and Criminal Investigator, can gather information for the Department, and can be the Criminal Investigator's contact for personnel matters.
6. The Criminal Investigators will promptly and periodically brief the Administrative Investigator(s) of the criminal investigation's progress. The Administrative Investigators will have access to briefings, the scene(s), physical evidence, and interviewees' statements.
7. Administrative Investigators are not bound by some of the same investigative restrictions that apply to Criminal Investigators (such as the 4, 5, 6, & 14<sup>th</sup> Amendments). They should not share any information gained in an interview in which the Department Garrity Warning was given with Criminal Investigators.

**OPR32.09 RELEASE OF INFORMATION:**

- A. The interests of the public's right to know what occurred must be balanced with the requirements of the investigation and with the rights of involved individuals.
- B. As in all other cases, care must be taken to insure that intentionally misleading, erroneous or false statements are not made.
- C. Agencies and individuals who are not well informed and not intimately involved with the investigation's results and progress should not make statements to the media or members of the public.
  1. The Department has the responsibility for making media releases about the incident and its investigation.
  2. Prior to any release of information to the news media, the Department's Public Information Officer must be contacted. If unavailable, the Chief of Police will be contacted.
  3. Officers in close contact with the Criminal Investigators are in the best position to comment about the facts of the case and the progress of the investigation. The person preparing any release should consult with the Criminal Investigators frequently for updates.
  4. Interruptions to the investigators will be minimized if the Department assigns a particular individual to be the sole designated contacts with the news media.

**OPR32.10 RELEASE OF EVIDENCE:**

- A. Material which is created or collected by, or at the request or direction of, Criminal Investigators (including the NMDPS Crime Lab) will be made available in a timely manner to those agencies which have an interest in the investigation, including the Administrative Investigators. This material includes:
  1. Reports, written and collected;
  2. Access to physical evidence;
  3. Photograph, diagrams, and video recordings;
  4. Recordings of interviews.
- B. When the Criminal Investigators conclude that the physical evidence collected is no longer needed for criminal law purposes, the Department shall be



notified of that decision so it can assume responsibility for preservation of such evidence. It is then the responsibility of the Department to notify by letter, the employees involved so they will know the disposition of the evidence.

#### OPR32.11 VICTIMS OF LINE OF DUTY DEATHS OR SERIOUS INJURIES:

A. A service photograph is taken and kept of each employee for any use the Department sees fit for within reason. This may include use of it in the event of his death or serious injury either by the Department, the media or both. The service photograph is taken immediately after hire in an appropriate uniform.

B. Services shall be provided to Department personnel and family members of employees involved in line of duty deaths or serious injuries including the following:

1. Notification of the incident in a timely and personal manner;
  - a. Family members may want to make their wishes known concerning the manner in which they are told of a line of duty death. This may be done in writing at the employee's and employee's family's convenience. The written correspondence should be kept in the employee's personnel file within the Department.
2. Assistance at the hospital;
3. Support at the funeral and burial;
4. Help with legal and benefit matters;
5. Support during criminal proceedings (if any);
6. Maintenance of long term contact.

#### OPR32.12 FAILURE TO FOLLOW ORDERS:

A. Action taken for violations of this general order will depend on the degree of severity, record of the offender and the seriousness of the consequences of the action. This may include progressive discipline up to and including termination except where otherwise noted or mandated within this order.